IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 6957 OF 2007

Jaydeo Ramchandra Kale and anr. ...Petitioners
Versus
Kumar Bhushan Shrikant Kale
and Ors. ....Respondents

S.D.Patil for the petitioners.
Mr.K.S.Patil, for respondent nos.1,2 and 3.

CORAM: S.C.DHARMADHIKARI, J.
4th December, 2007.

P.C. :

1. The petitioner is aggrieved by an order below Exhibit-67 in Special Civil Suit No. 24 of 2006 which directs as under :-

> ." The application is partly allowed. Defendant no.1 is directed to pay Rs.3000/-p.m. (Rs.Three Thousand Only) (Rs.1500 each plaintiff no.1 and 2) as interim alimony from the date of application till the disposal of the suit.

2. The petitioner/defendant no.1 is thus directed to pay the above amount as interim alimony to plaintiff nos.1 and 2 who is the minor and the wife of deceased

brother Shrikant R.kale.

3. The grievance of the plaintiffs was that after the death of Shrikant, the petitioner is exclusively holding the lands and house properties. He is also taking yield from the agricultural land. The defendant no.1/petitioner filed an Affidavit and disputed all these contentions and submitted that the plaintiff no.3 is working as a Teacher and draws enough salary. She has also let out some portion of her house and is receiving rent.

4. The court below considered all these contentions and at the prima-facie stage directed as above.

5. Mr.Sandesh Patil, appearing for the petitioners, submitted that the petitioner no.1 is working with the Maharashtra State Road Transport Corporation. It is not true that he has been cultivating the agricultural lands and taking away the fruits therefrom exclusively. He has submitted that the lands are not in a cultivable state and infact there is no income generated from the same. The Trial Court was therefore in error in

passing the impugned order.

6. Mr.Patil, appearing for the petitioners after taking instructions from the petitioners, makes a statement that the petitioners are willing to make appropriate statements with regard to protecting the share of the respondents in the suit.

7. Mr.Kuldeep Patil, appearing for the respondent nos.1 to 3 , who are the contesting respondents, submits that the impugned order has been delivered in June 2007 and barring deposit of meagre amount of Rs.5,000/-, no amount is paid.

8. To my mind, the contentions now raised before me cannot be gone into. This court cannot take cognisance of these pleas straightaway. The petitioners while challenging the impugned order before me have not stated anything in the grounds of the petition either. In such circumstances, the proper course would be to permit the petitioners to apply for variation/modification of the order passed by the Trial Court. If such an application is made within a period

of ten days from today, the Trial Court to proceed and decide the same after giving notice to the respondents within a period of six weeks from the date the same is preferred. If the application for modification/variation is not preferred within the time granted today, then the impugned order stands and this Writ Petition would also stand dismissed. Even otherwise, at this stage, I do not feel that the impugned order requires any interference.

9. The amount of Rs.5,000/- if not already deposited must be deposited within a period of ten days. If the said amount is deposited, then the respondents are allowed to withdraw the same, subject, to further orders and directions of the Trial Court.

10. All contentions insofar as the application for variation and/or modification of the impugned order are kept open. For a period of ten days from today, the Trial Court not to proceed and strike off the defence of the present petitioners, so also, no coercive action should be taken by the contesting respondents till then. Petition disposed off. No costs.

SD/-

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